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Dr Whitley Stokes
1882

With the author's compliments.

Seven Years of Indian Legislation.

BY

W. W. HUNTER, LL. D.,

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Of the Bengal Civil Service.

CALCUTTA—1870.

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THE following pages appeared in one of the Calcutta Daily Papers at the end of 1869. They are reproduced at the desire of several who think that so brilliant a period of legislative activity should not be suffered to pass without some contemporary narrative, and who believe that the Indian Land-laws of the past seven years are at present fraught with peculiar interest to Englishmen at home. The original structure of the articles was too slight to admit of their being worked up into any thing worthy of the name of a permanent record. They are therefore reprinted without additions or elaboration of any sort.

HENRY SUMNER MAINE,

OR

SEVEN YEARS OF INDIAN LEGISLATION.

THE Session of the Viceregal Council for 1869-70 opened with a remarkable proceeding. The Governor General moved a resolution recording the services rendered to India by the Legislator, whose Eastern career has recently come to a close. A few weeks previously, Mr. Maine had sailed from Bombay, unobtrusively quitting the country without noise or demonstration of any sort. Such brief leave-takings as he went through were reserved for his friends. Of after-dinner speeches there is absolutely no record, and the public realised his departure for the first time by the State honors which were paid, on the re-opening of Council, to his memory. These honors, unusual in themselves, were rendered still more significant by coming directly and personally from the head of the Government, and we take advantage of the interest they excite, to review very briefly the services by which they were won.

Henry Sumner Maine arrived in India with a reputation as a jurist and man of letters who combined an admirable command of language with scholarly insight and rare powers of philosophical research, but who had reached middle-life without seeking any prominent position in the more practical paths of his profession. A brilliant University career had resulted, as fortunately for the English Bar such a career often results, in no engrossing pecuniary success. But Mr. Maine had written a book which, within a few years of its appearance, was familiar to the whole existing generation of Barristers, and the perusal of which has formed a memorable epoch in the growth of many a young lawyer's mind. It had also had the remarkable fortune of becoming with equal rapidity a standard work among scholars

who found themselves introduced, as they had never before been introduced in the English tongue, to those regions beyond the horizon of formulated law, in which enactment and precedent merge into the distinctive manners and customs that make the beginnings of nations. The Scotch Bar has an admirable tradition that the academic youth after leaving College, shall study a year at a Continental University before they are called in Parliament House. Mr. Maine's "Ancient Law" performs much the same function in an English Barrister's education, as that which is accomplished more slowly, but more thoroughly, for an Edinburgh Advocate by his residence at Heidelberg or Jena. As Regius Professor of Civil Law at Cambridge, and Reader on Jurisprudence in the Middle Temple, he attained a distinction always rare in England, and rare throughout the world in this sceptical age, that of founding a distinct school of his own. Among men of letters, he had long enjoyed the reputation of an incisive leader-writer, and, if we mistake not, was one of the coterie that started, and made the success of, the *Saturday Review*. In this way Mr Maine reached middle-life, lecturing, examining, reviewing, preparing new editions of his great work, doing whatever he had to do with ability and insight; always a recognised man of ideas, and latterly one of the foremost English thinkers of our time.

In 1862 Mr. Maine's career as a Legislator began. The death of the Legal Member of Council had left the Indian Government in the midst of vast legislative enterprises; with a country recently reconquered from a mutinous soldiery and transferred from its former masters to the Crown; with a widely ramified system of Codes newly introduced and requiring the most careful watching; with codification still going on upon a scale that finds precedents only in the eras of Justinian and Napoleon; and with demands constantly coming in from ten separate Local Governments for enactments that should give statutory recognition to the altered necessities of the times. Mr. Ritchie's name now awakens no chord in the public memory at home, except perhaps some indistinct recollection of the pathetic Round-

about Paper in which his appointment is recorded side by side with the death of his friend. But the little boy who had been Thackeray's playmate is remembered here as a hard-working man, who contributed in no insignificant measure towards the legislative reconstruction of the Empire. The appointment was a difficult one to fill up, for it demanded a talent for systematic arrangement, and that faculty of controlling the particular in order to evolving the general, so rare among practical men at the Bar. Mr. Maine was selected by Lord Halifax, as the nominee of no party, and by no exertion of political influence, but simply as the man who, among all English jurists of the day, was the best fitted for the post.

The record of Mr. Maine's Indian career is now closed and lies before us. For the benefit of those who calculate a man's work in life by linear measurement we append a few of the most important Acts which have passed through the Legal Member's hands during the past seven years. It will be perceived that, even judging by feet and inches, the result is somewhat startling. But we propose rather to judge of Mr. Maine's labours by their influence upon the country which he served, and upon the people for whom he was retained to legislate.

Of the two hundred and eleven enactments* that issued from the Legislature under his supervision, there are not less than thirty which are destined to wield a permanent influence upon some hundred and fifty millions of men. His first two years of office produced the enactments from which the regular administration of justice in British Burmah dates ; a number of laws bearing upon commerce, conspicuously the Merchant Seamens' Act, the Foreigners' Act of 1864, the special Act for the Comptoir D'Escompte, the consolidated Customs Acts, and the Official Trustee Act ; with several important modifications and extensions of the Penal and Civil Codes ; and a group of enactments affecting the rural economy of the country, among which

* The list of Acts dates from 24th November 1862 to the 24th September 1869.

it is necessary to particularise the Coolie Emigration Law of 1864, and the Act for the Registration of Assurances.

The last two are sufficient in themselves to make a legislator's name memorable in any country but India. Of the Emigration Law we will only say, that with many inevitable defects in its practical working, and based as it was upon an exaggerated idea of the necessity of supervising commercial dealings with the people, an idea which it then seemed hopeless to think of eradicating from the Indian Official mind, it nevertheless met a great and pressing difficulty in a spirit of humanity creditable to the Government, and with infinitely more wisdom than had ever been exhibited in previous cases of interference. It is an absolute necessity that a class so ignorant and so helpless as the Indian coolies, should receive a legislative status, amounting to a guarantee against enslavement in distant lands, and the only question is how to reconcile this artificial position with the natural freedom of contract between labourer and employer.

Of the Registration Act of 1864 and its subsequent revision in 1866, we can speak with less reservation. It is scarcely too much to affirm that this law will do, and is at present doing, more towards the establishment of undisputed titles to landed property in India than all the previous legislation on the subject put together. Such legislation dates from 1842, but hitherto it has been always a matter of great difficulty, and in nine cases out of ten an absolute impossibility, to give a complete title to an estate in Bengal. The present law occupied the attention of the Government throughout the first two years of Mr. Maine's incumbency, and in its revised form is to a large extent the work of his hands. It enforces registration of every transfer or mortgage of immoveable property to the extent of £10 or upwards, and, with a few exceptions, every lease of such property for any period exceeding one year. By this means it prevents the under-hand transactions which formerly rendered Indian title-deeds of less value than the parchment on which they were engrossed, and at no distant date the process of testing the validity

of such documents will be as rapid and as inexpensive in Bengal as it is in Scotland, and much simpler than it is at present in England. For a fee of a few shillings a purchaser of landed property will be able to ascertain exactly what incumbrances on mortgages have been created upon any estate. Provision is also made for the registration of wills and written authorities to adopt heirs, a very important subject in the rural economy of India. All written instruments affecting moveable property may be registered, but the registration of such documents is left optional. In the case of bonds and other written obligations for the payment of money, registration renders litigation or dispute impossible. The amount secured by such an instrument, when duly registered, may be recovered without the institution of a suit; the registered document being enforced like a decree of the Civil Court.

The next two years, 1864-65 and 1865-66, were perhaps the most important in Mr. Maine's tenure of office. A series of long-needed Commercial Acts were passed in rapid succession, beginning with the Common Carriers' Act of 1865, which adapted to India the principles embodied in the English Statutes, 9 Geo. IV and 1 Wm. IV, cap. 68. The Bombay Insolvency Act and the Currency Law of 1866 followed, along with the three important measures known as the Bill of Exchange Act, the Companies' Act, and the Partnership Law. It is impossible, within the limits of this sketch, to do more than simply refer to these measures. They form a series of skilful adaptations of English Law, and of important original efforts at legislation for the commercial necessities of this country. Specific difficulties have since occurred in the working of each of them, but, taken as a whole, they form a noble memorial of the legislative sagacity and political insight of the Jurist who has recently quitted these shores.

If we were to particularise any of the measures belonging to this period, however, it would rather be those which affected the great mass of the people. For, meanwhile, the same legis-

lative activity was going on in every department of the administration. One province after another was brought under the consolidating influences of a uniform system of law. The Excise Act of Bengal was extended to the confines of Northern India. Definite Regulations and a written Code were gradually applied to the Non-Regulation Provinces, while the internal wants of the country and the necessities arising out of an altered state of society received recognition by such measures as the Rural Police Act, the Pleaders' Act, the New Registration Act, the Indian Law of Succession, in itself a memorable piece of legislation, with its supplement the Parsee Succession Act, and the two celebrated Marriage Laws regulating divorce among the Parsee community and re-marriage among Native Converts to Christianity. The list can be very quickly read over, but those who are acquainted with the interior life of the country will know that this list represents the substitution of systematic laws for the old "discretionary" administration of the Courts, and the consolidation of heterogeneous provinces into a well-knit Empire. At the same time an increased security was given to rural property throughout Northern India, and the legislature developed for the first time in any Asiatic country, an educated Provincial Bar. The Marriage Laws created a new domestic world for two numerous Indian communities; one of them, the Parsees, distinguished by advanced ideas not less than by wealth and mercantile enterprise; the other, the Native Converts, cut adrift from all the traditions and restraints of respectable Indian Society, and struggling in the Slough of Despond between the unenlightened but undoubting beliefs of their fathers, and the higher level of Christian faith.

The Indian Law of Succession is a Code rather than an Act. It forms the first instalment of the body of substantive civil law, framed specially for India by the Commissioners appointed by Her Majesty for that purpose. It embodies the entire law of succession and inheritance applicable to all classes domiciled in British India, other than the Hindus, Mahommedans and Buddhists each of which communities has a special code

of its own. While accepting the law of England as its basis, it divests that law of its acknowledged excrescences, and forms out of it a simple and intelligible system suited to the population to whom it applies. We are acquainted with no single piece of legislation, done by English lawyers, which will so well repay critical study, and a continental Jurist would probably consider the share that Mr. Maine had in its introduction, as the most fortunate event in his career.

It is right to add that this same brilliant period was marked by two measures which gave great offence to the European community,—the abolition of the Grand Jury, and an attempt to levy export duties on the staple products of the country. The first measure is one which admits of discussion, for in a small community the Grand Jury is apt to absorb the very men who are required to give respectability to the classes from which the Petit-Jury has to be chosen. The difficulty is intensified in India, by the laudable aversion of the dominant race to draw invidious distinctions among its members. Practically, the Grand Jury list had become so extensive that the Crown Officers found it difficult to bring together an intelligent Petit Jury. At the same time it seems questionable wisdom to withdraw from an English community an institution, to which they had long been accustomed, and which they were desirous to retain.

The next two years present a new phase of Mr. Maine's career. Hitherto his work had been that of a Jurist, little mixed up with party feelings or measures. But strong parties existed in the Council with which he had to work, and the time had come for him to decide whether he was to legislate for a small but powerful class that could make its voice heard, or to take his stand boldly with those who had determined to assert the ancient, although badly defined, rights of the people.

The Legislative events of 1865-65 had brought him into direct contact with the public. The Commercial Company's Act, and the adaptation to India of the statutory amendments made in the law of Bills of Exchange and of Partnership in England,

involved a careful study of the actual condition and wants of the Indian Mercantile community. The revision of the Registration Law rendered it necessary to ascertain and consider the views of the still more numerous classes affected by it. In several Acts, conspicuously the abolition of the Grand Jury in the early part of 1865, and the Native Convert Marriage Bill a year later, the Legislature had to carry its measures in the face of a strong opposition outside. But it was at the beginning of the next Session, 1866-67, that the political character of Mr. Maine's career declared itself. Ever since the mutiny, the landed system of Oudh had been a subject that from time to time forced itself on the attention of Government. At the close of Lord Canning's rule it seemed indeed that a final solution had been attained, but under Lord Lawrence it became necessary to re-open the question. More recently the relations of landlord and tenant in the Punjab demanded a formal solution. During the last seven years, therefore, the Indian Government has been called upon to frame a Land-law for two provinces several times greater than Ireland, and to decide what profit some twenty-five millions of peasants shall have in the labour which they take under the sun.

We have hitherto attempted to follow the general course of legislation during Mr. Maine's incumbency, although conscious that the result can be scarcely more than a meagre list of Acts, little suggestive or interesting to those whose memories do not supply the details which our space precludes us from giving. But we here propose to pause over the two great measures by which, if ever the history of India comes to be truly written, the legislation of the past seven years will be judged. For after all, it is by what an Indian statesman does for the people of the land that his reputation must permanently stand or fall. The declaration of the rights of the poor is a work far more enduring for evil or for good than the erection of High Courts, or the imposition of Imperial taxes, or than any ingenious devices for the improvement of title-deeds, or even than the unshackling of commerce itself.

For English commerce has intelligence and courage. It knows its own interests, and is quite strong enough in the long run to secure them. All it asks from Government is to be let alone, and when an Indian Legislator promptly adapts to its requirements the improvements that are made in the mercantile law of England, he has done enough. Mr. Maine recognised this, and he accordingly carried home with him the suffrages of the commercial public. But the rural population of India holds an entirely different position. It altogether wants that power of extorting which is the first necessity of a people in its dealings with Government. The function of the Legislature in England is little more than to find out that the country really wants a measure before granting it, and to distinguish between party outcries and the voice of the nation. But here, the Legislature has the far more responsible duty of acting as trustee for a people without representatives, and destitute of any organisation for making itself heard; a people so long accustomed to be miserable as to have lost almost all notion of its rights except a dull sense of pain when wronged.

The difficulty of land-legislation in India is further complicated by the circumstance, that while there is this defective power of utterance on the part of the masses, the native aristocracy has learned under English Rule how to make its wishes very distinctly heard. For years the proprietors have been urging their side of the case upon Government with the utmost power of statement that it admitted. There is, moreover, no discussion to which English gentlemen bring such violent prepossessions and lifelong convictions as to a law for redistributing the right in the land. It will be readily understood, therefore, that widely and bitterly opposed parties start up in the Indian Government, as soon as such a question comes before it.

The one side has of late years been represented by Sir Henry Durand, whose experience as a diplomatist and Resident at Native Courts, subsequently as Foreign Secretary, and finally as Minister for Foreign Affairs, rendered him peculiarly sensitive to the claims of the Indian aristocracy, and specially fitted to

judge of the danger of interfering with their privileges. At the same time, his firmly-established reputation as a man who, through a long official life, had earnestly striven to do what was upright to all, saved him from any suspicion of desiring to sacrifice the rights of the silent many for the sake of quieting the clamorous few. On the other side were arrayed Lord Lawrence and Mr. J. Strachey, two Civilians who had ruled the very provinces for which they were now called on to legislate, and who knew and sympathised, as only Civilians can know and sympathise, with the toiling mass of the people. There was no hesitation in either party as to what it ought to do. Each believed that the other was on the eve of committing a great injustice.

But if we endeavour to project ourselves beyond the noise of the conflict, we shall find that it was one of those inevitable questions which have arisen in the history of every Indian Province. The *dominium* in the soil is so split and shattered by centuries of conquest and misrule, that the first result of good government and a little prosperity is to bring up a crop of conflicting claims to the land. Every class has had, or believes that it has had, a greater share of the proprietory right than it could ever practically enforce. So long a period of lawlessness has generally elapsed, moreover, before our sovereignty imposes order upon all, that the claims of each successive set of ousters have had time to harden into prescriptive rights, while those whom they deprived of the land have not the less fondly cherished the remembrance of their title to it. When we establish the reign of law, the courts are consequently called upon to deal with a mass of irreconcilable claims, and it becomes the duty of the legislature to evolve out of the confused débris of rights, the various gradations of usufruct, possession, and ownership in the land.

This process can never be accomplished without causing much discontent. For in order to create practical and absolute rights, the Government has to cut adrift many of the most fondly cherished theoretical claims, and at every stage to give umbrage either to recent usage or to ancient title. The question is further complicated by the fact, that in many provinces under Native

Rule the only limit to the extortion of the strong is the absolute death by hunger, or the wholesale desertion of the weak. Let any one read Sleeman's Tour through Oudh a short time before its annexation, and he will find that the king only desisted from his exactions when the landholders had formed themselves into a militia strong enough to hold their own against the royal troops; and that the landholders steadily kept up their extortions to within a hair's breadth of the point, at which the cultivators were wont to fly into the jungle, or to desert by villages to our side of the Ganges. A civilised Government cannot permit the misery of its people, and in several parts of India we have been forced, while pretending to recognise existing usages and preserve the *status quo*, to erect a series of legal barriers between the strong and the weak, which shall put a stop to oppression before it reaches its prescriptive point of depopulation by flight or by famine.

In Oudh the subject was complicated by two questions, distinct in themselves, but intimately connected with the land, coming up simultaneously for legislation. The Government was called upon to decide not only with regard to the right of the proprietors as against their tenants, but also as against their creditors and their heirs in tail. Formerly an Oudh proprietor had only the usufruct of his estate, very much in the same degree as the owner of an entailed estate in England has. He could not transfer it by gift or sale, nor could he, except under special circumstances, bequeath it away from the heir-at-law. This state of things gave rise to gross abuses. Landholders rushed into debt, and not being able to meet their liabilities by the sale of part of their property, their estates fell gradually but completely into the hands of money-lenders who had no interest in the permanent welfare of the tenants, and rack-rented, extorted, and plundered the unhappy cultivators without fear or pity. The whole labouring population passed into the clutch of usurers. As soon as the country quieted down after the events of 1857, the misery of the peasantry came to light, but the action of Government was in the first case neither adequate nor

well-defined. Subsequently, when the question pressed for decision with an urgency that could no longer be shirked, it was argued on the one side that the mutiny had placed the province in the position of a conquered country, and that, having started unfettered by previous engagements, we might engrave what constitution we pleased upon the blank tablets. But it was replied on the other hand that, subsequently to the mutiny, the Government had placed itself under obligations to maintain the existing status of the proprietors by certain formal acts of the Executive, and that it was a breach of faith to take advantage of the circumstance that these acts had not the strict force of Law. The Executive in 1866 gave a formal interpretation of its position, and the subject first came before the Legislative Council in order that certain rules, made by the Chief Commissioner and approved by the Viceroy, should receive the formal sanction of the Legislature.

After three years' careful investigation, the legislature decided on the 12th of January 1869, to give to the Oudh proprietors the power under certain restrictions, to dispose of their estates either *inter vivos*, or by bequest. The immediate result of the law was to mobilise real property, by definitively sanctioning its transfer. But the permanent effect will be the breaking up of an important class of hereditary estates, which have heretofore been jealously kept intact; while their owners lay helpless under an accumulation of debt, unable to discharge their duties either to the land or to their tenants, and while the cultivators had the life squeezed out of them by receivers destitute of any permanent interest in the soil. The Act bears an analogy in some respects, to the present tendency of English legislation to open up entails. In the first place it gives the holders a more complete proprietory right, by extending their power in the disposal of their estates, but in the long run it will lead to the disintegration of the landed families of the province.

Meanwhile two laws had been passed in which the question of Landlord and Tenant was formally taken up and settled.

In July 1868, the cultivators of Oudh received a legislative definition of their rights, and on the 21st October of the same year the Punjab Tenancy Bill became law. It is impossible to go into the details in either case. In both, the solution was arrived at by authortatively partitioning the proprietory right, and vesting a share in each of the classes interested in the land. This is the reverse of the process which has been going on for centuries in England. There the whole rights in the soil have been gathered up into one firm entity and vested in a single class. Here, on the other hand, the law vests the *plenum dominium* in the landlord, only in cases in which no other class exists with a right to a share of it. When such other classes exist, it gives little more than the bare ownership to the proprietor, and makes over the possession to the cultivators, in a more or less absolute form, according to their degree of right.

The recognition of such inferior possessory rights renders necessary a distinct Land Code. Special provisions regarding rent, ejectment, improvements, and enhancement are required to conserve the status thus accorded to the cultivator. The Chapter on Improvements is one of peculiar interest to English legislators at the present moment. In both the Oudh and Punjab Rent Laws its provisions are substantially the same. The improvements for which a tenant has an equitable claim for compensation are divided into two classes;

1*st*.—The construction of works for the storage or supply of water; works for drainage or for protection against floods; the construction of wells; the reclaiming of waste lands or jungles, and similar undertakings which result in a *bonâ fide* and permanent increase to the value of the proprietor's estate.

2*nd*.—The renewal or re-construction of such works apart from mere repairs or maintenance, and any such alterations or additions that durably increase their value.

Such works benefit the State in scarcely a less degree than the proprietor or the tenant, for they are the only safeguard

against depopulation and famine. It is, therefore, of the first importance that the State should encourage their construction, and as Indian landholders have seldom capital to invest in their land, the only chance of getting such works done at all is to secure the tenant in the enjoyment of their fruits. The compensation may be at the option of the landlord, by payment in money, or by granting a beneficial lease of the land to the tenant, or partly by money and partly by a beneficial lease. The law infers in favour of the landlord that a twenty years' lease is always a beneficial one, and the acceptance of such a lease on the part of the tenant bars his right to compensation.

Such laws as these, affecting the whole future of some twenty-five millions of cultivators and proprietors, could never pass through a Legislature consisting of Englishmen without fierce discussion, altogether irrespective of the outside opinions of the different classes interested in the land. In one case, and in one case only, however, has the British Government of India arrived at a conclusion substantially different from the one upon which the Oudh and Punjab Tenancy Acts are based. Even in that case, the difference was rather left to the operation of the law, than formally asserted in principle. Lord Cornwallis never denied the rights of the cultivators; on the contrary, he expressly reserved them. But while he reserved the rights of the cultivators, he defined and legislatively recognised the right of the proprietors. The practical effect was that the landlord could go into Court with an indisputable title, while the tenant had only a barren acknowledgment of indefinite rights, expressly reserved by the Legislature, but unknown to the law.

This took place in Bengal eighty years ago; but in every other part of India, and on every subsequent occasion, the action of Government has been diametrically opposite. In Madras and Bombay, indeed, the Legislature fell into the more dangerous extreme of recognising no one between the Government and the tiller of the soil. It thus deprived itself and the country of a proprietory class; a class which is the natural outcome of that accumulation of capital which inevitably takes place under

a good administration, and without which an advanced state of civilisation is impossible. But between extremes there is a middle course, and an escape has been found alike from the destruction of the aristocracy and from the degradation of the peasantry. In 1868 the Legislature made over the proprietory right to the former, and gave the possessory privileges, under certain restrictions, to the latter. This middle course was many years ago adopted in the North-west Provinces; more formally in the revision of the land-law of Bengal in 1859; subsequently in the Central Provinces, where it was accomplished without special legislation by an order of the Executive Government; and the two Acts for Oudh and the Punjab at length render it uniform throughout the whole of Northern India. Peasant rights are now the basis of the land-law among a rural population of more than a hundred millions of men.

The last two Acts contrast very favourably with the Bengal land-law of 1859. That Act practically recognised two classes of cultivators with possessory rights; namely, those who have occupied their holdings from 1793 at the same rent, and those who have held at the same rent for twelve years and upwards. To the first it gives the Right of Occupancy at the existing rent in perpetuity, or so long as they continue to pay the said rent. To the second it gives the Right of Occupancy, so long as they pay what it terms a fair and equitable rent. It failed, however, to define what a fair and equitable rent was, and this omission, by leaving the work of the Legislature to be done by the Courts, has ruined thousands of peasant families, and cruelly prolonged the paroxysm of litigation which the revision of the landed system inevitably brought on.

The Oudh and Punjab Acts proceed upon a more intelligible principle. Their object is to set right the wrongs that were done during periods when the law was in abeyance. During such periods, whole races of village proprietors had been swept off the face of the earth; their bodies indeed remaining to drudge for the benefit of the ousters, but their privileges, status and

whole former existence being annihilated. Our first efforts at legislation had to take things as they found them, and in this way a great wrong was done to all who happened at the period of our accession to be deprived of their rights, or unable to enforce them. But with increased knowledge of the country, the British Legislature has endeavoured to do justice even at the expense of admitting that it has done wrong. The Oudh and Punjab Tenancy Acts divide tenants into those who had formerly proprietory rights but have lost them, and those who never had such rights.

The former they protect by a Right of Occupancy. In the case of Oudh this right is given to any tenant who within thirty years before our acquisition of the country, had been, either by himself, or by some person from whom he inherits, in possession as a proprietor in the village or estate which he actually held or cultivated on the 24th August 1866. The Punjab Act endeavours by a set of specific provisions to give a similar recognition to the claims for former proprietors of, and ancient settlers on, the soil. It divides these into five classes. 1*st*, Tenants whose ancestors have held their land for at least two generations, paying only the land revenue to Government and recognised village cesses. 2*nd*, Tenants who had enjoyed proprietory rights in the land which they still occupy, but who have involuntarily lost those rights. 3*rd*, Tenants who represent the original settlers in the village. 4*th*, Tenants who have held military fiefs in the village, and who have occupied their present lands continuously for at least twenty years. 5*th*, Tenants whose names or whose ancestors appear as having a right of occupancy to their present lands in the Settlement Record of the Province, and whose rights shall not have subsequently been annulled by their own admission or by the action of the Courts.

In the Oudh and Punjab Acts the nature and legal value of this Right of Occupancy are well defined. It confers a heritable, but not otherwise transferrable, claim to occupy the same land at the same rent, except in certain specified cases in which enhancement can be effected by means of a suit. Instead of leaving

the determination of what would be a "fair" enhancement to the discretion of the Courts, it fixed the maximum rates that can be obtained from an occupancy tenant at a certain per cent. below the ordinary rent paid for the same kind of land by tenants not possessing the Right of Occupancy. In Oudh the peasant with occupancy rights is entitled to a lease at a rent at least 12½ per cent. below the market rates. In the Punjab the lowest class of occupancy tenants pay 15 per cent. less than the husbandman without these possessory rights.

For the improved mechanism of these laws Mr. Maine deserves credit, but it was rather in another respect that he performed his most valuable services to the State. The Members of the Executive Government came to the work of legislation with their minds firmly made up, and divided into two sternly opposed parties. It is known that Lord Lawrence was determined to put forth the utmost powers that the law has conferred on his great office, in carrying the measures. Indeed before the subject came before the Legislature at all, the credit of the Viceroy was staked by the orders of his Executive Government upon the result. We have to thank Mr. Maine for the circumstance that amid this fierce contention he never forgot the Jurist in the Politician, and that, while giving effective support to the head of the Government, he eliminated all traces of the conflict that was raging between Members of the Executive, from the action of the Legislature. Those who remember the very different results of the similar legislation of 1859, and how the Local Executive, by rushing into the fight, and by mixing up questions which required separate treatment, ruined a great interest, and covered these provinces with class animosities so bitter as for a time to disorganise rural society,—will thank Lord Lawrence not less than Mr. Maine for the comparative quiet with which the recent reforms have been introduced.

Nothing in truth can be more destructive or more cruel than a re-adjustment of rural rights, however wise or necessary in itself, if suddenly forced upon a people. The same system of landed property which, by the slow fruition of centuries, has enabled

England to conquer or colonise half the world, only resulted in misery when artificially created before its time, by the headlong legislation of Somerset's Protectorate. "A change in the relations between the peasantry and the owners of the soil," says Froude, "which three hundred years have but just effected, with the assistance of an unlimited field for emigration, was attempted harshly and unmercifully with no such assistance in a single generation." In our own time we have seen the converse of this system introduced, scarcely less harshly and not less ruinously, into Bengal. Ten years afterwards the Province is still staggering from the blow. It seems likely that a similar experiment is soon to be made in Ireland. We pray that the English Legislature may take warning by our experience in India. It has two models before it; the Rent Law of Lower Bengal, a measure necessary in itself, but introduced when the passions alike of landlord and tenant were at a white heat, and when the Local Government was in the act of throwing itself pell-mell into the fray; and the Oudh or Punjab Tenancy Acts, the sober and chastened result of a great Indian statesman's life, prolonged beyond the ordinary span and devoted consistently, from first to last, to the ascertainment and assertion of rural rights.

We must conclude by very briefly mentioning a few of the miscellaneous acts which mark the last three years of Mr. Maine's incumbency. In 1866 he digested and adapted to India the improvements made in the English Law of Property by the Statutes known as Lord St. Leonard's Acts. In 1867 he consolidated and amended the whole law relating to the Office and Duties of the Administrator-General. In 1868 the entire Regulation Law of Bengal passod under his review, and no less than four hundred and twenty-three enactments, being found to have expired or grown obsolete, were formally excised. The same year saw a bold effort made in the cause of sanitation, which simply means in the cause of enlightened humanity, by the Contagious Diseases' Act, and the early part of 1869 will be memorable in the Annals of Indian Legislation for the Indian Marriage Code. This Act, in itself an enterprise of the first mag-

nitude, is divided into fourteen chapters, and adapts to India whatever is really sound in the English Divorce Acts, with a large number of rulings by the late Sir Cresswell Cresswell and the present Judge Ordinary. Like all Mr. Maine's work, it is penetrated by a spirit of order and codification, and it is made to fit in with the great Legislative whole, of which the Civil Procedure and the Indian Succession Act form conspicuous parts. It does not hesitate to adopt a sound idea from whatever source derived; one of its sections embodies a provision of the New York Civil Code, and it ends, as every extensive Act ought to end, with a copious Index.

While the status of the English population in India was thus being defined and codified, a series of searching enactments were dealing with the internal administration of the country. Municipal Institutions were strengthened, the Rural Police was reformed, the powers of many Local Courts were defined, an important law for the regulation of Printing Presses and the preservation of copies of books published in India was passed, the old bad system of Customs Duties was, to some extent, improved, and the Code of Criminal Procedure was formally revised.

We feel more acutely than ever, that bare lists of enactments which it has alone been in our power to give, can be but little suggestive to those whose memories do not supply the details precluded from this slight sketch. To those whose recollections supply the details, such lists by bringing the work of the past seven years to a focus, will supply abundant matter for congratulation, and for sober pride in the progress of the empire. Every part of the administration, from the Village Watchman to the Supreme Courts, has been passed under review, and at the same time a body of substantive law has been created, or imported with skilful adaptations, for the European population. Indeed, so great has been the legislative activity of the past seven years that a complaint of over legislation, headed by so respectable an authority as a judge of the Madras High Court, was at one time brought against the Government. We think

Mr. Maine did wisely in taking up a charge thus publicly made, and placing its refutation on record. That refutation was singularly complete, establishing beyond further question that the overwhelming majority of the enactments were measures sent up by the Subordinate Governments, and declared by them to be absolutely necessary for the conduct of their local administrations. Over these local measures the Supreme Legislature has exercised during the past seven years an unusually vigilant control. The discussion led the public to contrast the well-digested and enduring laws which have emanated from the Viceregal Council with the miscellaneous mass of legislation produced by the Subordinate Governments. Meanwhile the Legislative Department of the Supreme Government has been so much strengthend as to have entirely out-grown its former proportions. Mr. Maine insisted upon having the best and most complete machinery for doing the material part of his work. He found the Legislative Department consisting practically of himself and a Clerk of Council. He has left behind, in addition to his successor, an additional Councillor and a full Secretary to Government, in whom the public recognises a future Legislative Member.

Personally Mr. Maine never pretended to any great enthusiasm about India, nor was he led into that fatal earnestness about the details of his work which has killed so many Statesmen who have come out from England in mature life. At an early period he recognised the really strong men in the Government and chose them as his private friends and public allies; civilians trained in the school of mutiny and famine, who had learned the practical lesson of ruling the peoples for which they now legislate; but whose names or praises are happily out of place in a sketch which deals only with careers that have closed.

A brilliant companion among his intimate friends, Mr. Maine bore Anglo-Indian society with much suavity, and the least possible expression of *ennui*, and it was only by the rare occasions in which he came into conflict with the outside community, that the public discovered his tenacity of purpose and unostentatious strength of will. Of his oratorical powers we have said

nothing, for in India, more perhaps than in any other country, it is by what a man does, rather than by how he speaks, that he is judged. But Calcutta will long remember those brilliant sequences of ideas, clothed in calm but exquisitely graceful language, by which he carried an audience upwards into the highest regions of thought. Many of his legislative speeches, such as those on the Specific Performance of Contracts, on the Limited Liability Law, Partnership, and Divorce Acts, are models of their kind; while some of them, conspicuously his efforts in the Tenancy Debates and Native Marriage Bill, would form memorable displays of eloquence in any Legislative assembly in the world.

Had the Life Peerage Bill passed, it was generally supposed that Mr. Maine would have been one of the first additions, under its provisions, to the House of Lords; and it is difficult to believe that, in the present state of legislation at home, he will be allowed long to enjoy his well-earned retirement. For the first time in the modern history of England the people seem to have made up their mind that the *plenum dominium* in the soil, that palladium of English society, may be, and indeed must be, infringed, if Ireland is ever to be welded with us into one nation. But the idea is so novel that, at the time these articles appeared, no one had proposed a measure which would not endanger the breaking up of the whole proprietory right. Since then a Bengal Civilian has had the honor of supplying the basis of the Irish Land Bill now before Parliament. Meanwhile Mr. Maine has done us the service of proving in his own person to Statesmen at home, that an Englishman can come out to India in middle life, do a really great work without killing himself, and return after his full Service with an adequate fortune and in unimpaired health.

LIST,

SELECTED FROM 211 ACTS
Passed during Mr. Maine's Tenure of office.
Arrived, November 1862; left India, October 1869.

1862-63.

Various Amendments of the Penal and Civil Criminal Codes.
Merchant Seamen's Act.
An Act constituting the Office of Recorder in British Burmah.

1863-64.

The Whipping Act.
The Emigration Act.
The Registration of Assurances.

1864-65.

The Common Carriers' Act.
Forest Act.
The Indian Law of Intestate and Testamentary Succession.
The Abolition of the Grand Jury, and Power of Circuit conferred on High Court.
The Parsi Marriage Act.
The Mooktear and Pleaders' Act.
Parsi's Succession Act.

1865-66.

Bombay Insolvent Act.
Amendment of Currency Act.
The Bills of Exchange Act.
Companies Act.
Partnership Act.
Registration Act (amended.)
The Marriage of Native Converts.

1866-67.

Mortgage Acts.
Punjab Outrages' Act.
The Administrator General's Act, and Act for preservation of Printed Books.
Stamp Act.

1867-68.

Act for prevention of Contagious Diseases.
Substitution of Stamps for Fees in High Courts, &c.
Sudder Ameen and Moonsiffs' Acts.

1868-69.

Oudh Rent Law.
Panjab Tenancy Act.
Police Act, N. W. P.
Divorce Act.

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